

Annapolis Police Department



GENERAL ORDER

Number: K.6

**Issue Date: November
2000**

TO: All Personnel

SUBJECT: Searches In General

PURPOSE

The purpose of this General Order is to clarify the procedures for searches incident to arrests, automobile searches, emergencies and exigent circumstances and searches in general.

POLICY

It shall be the policy of the Annapolis Police Department that all members shall adhere to the Fourth Amendment of the United States Constitution. Nothing in this policy shall prohibit members from following the guidelines of the Fourth Amendment.

DEFINITIONS

Probable Cause - Probable cause to search is the existence of facts and circumstances that are enough to satisfy an officer of ordinary caution that a crime has been or is being committed, that the particular thing to be seized in the search is reasonably connected to the crime, and that it can be found at a particular place.

I. Search Incident to Arrest

- A. At the time an officer makes an arrest, or immediately after the arrest, the officer may search the arrested person and the immediate area into which he/she can reach. If the arrest takes place in an automobile, the officer may, incident to arrest, search the passenger compartment and any containers the officer finds inside.
- B. A search incident to arrest may be made for weapons, evidence, or means of escape. A thorough search of the arrested person is also justified for purposes of securing him

and taking him into custody.

- C. An officer may, without a warrant, seize evidence or contraband that is in “plain view” at the time of the arrest.
- D. Failure to obtain a search or arrest warrant, even though the officer had time and opportunity and valid grounds to get one, does not invalidate a search if it is justifiable as incident to a warrantless arrest.

II. Automobile Searches

- A. An officer can make a warrantless search of a car which was in motion, or at least mobile, when seized, and which the officer has probable cause to believe contains contraband or evidence of a crime. This is true even if the car has been taken into police custody.
- B. If an officer does not obtain probable cause to search a car until after it has lost its mobility or has been taken into custody, obtain a search warrant.
 - 1. If an officer has some doubts about whether they actually have probable cause to search a car, and the officer is sure that they will be able to retain custody of the car until a warrant is obtained, the officer should play it safe and attempt to get a warrant.
 - 2. The courts’ preference for search warrants and their willingness to uphold a search pursuant to a warrant when they might not approve of a search without a warrant will still very likely apply to automobile searches.
- C. An automobile search founded on probable cause may extend to any part of the vehicle, including closed containers found inside, in which the object of the search can be concealed.
- D. A container located in a vehicle may be searched without a warrant if an officer has probable cause to believe that the container contains evidence or contraband,
- E. A “motor home” is subject to warrantless searches to the same extent as a car, so long as it is mobile.
 - 1. This rule covers vans, recreational vehicles, and the like, which are outfitted as dwellings but are capable of being driven on the road. This rule does not cover prefabricated dwellings that, despite being called “mobile homes” or “travelers”, are mobile in name only.
 - 2. It is unclear whether the relaxed rules for searching automobiles apply to a

motor home that is parked or in such a way as to indicate the it is really a residence. A motor home that is elevated on blocks and connected to utility lines should probably not be treated as a vehicle for Fourth Amendment purposes.

III. Emergencies and Exigent Circumstances

- A. An officer may make a warrantless search of anything, whether personal belongings, a vehicle, or a building, anytime that the officer has good reason to believe it is necessary to save a life or prevent injury or serious property damage.
- B. An officer may make a warrantless search for evidence that the officer has probable cause to believe is in the place or thing to be searched and that the officer has reason to believe will be destroyed or moved before a warrant can be obtained.

IV. Hot Pursuit

- A. If an officer is pursuing a person the officer has probable cause to believe is armed and has just committed a serious crime, the officer may, for the purpose of their own safety, the safety of the public, and the preventing of escape, search the building into which the officer has pursued the person.
- B. Under limited circumstances an officer may, without a warrant, enter a building in hot pursuit of a felony suspect who the officer believes is not armed but will destroy or conceal evidence if not apprehended immediately.

V. Stop and Frisk/ Consent Searches

Refer to **General Order K.4** and **K.5**.

VI. Open Fields

Under the “open field” doctrine, an officer may enter and search any unoccupied or underdeveloped area that lies outside the “curtilage of a dwelling”.

1. “Curtilage” means the area around the home to which the activity of home life extends. The relevant factors in determining whether an area is within the curtilage include its distance from the home, whether it is within a fence or other enclosure that surrounds the home, the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing it.

2. If the area is associated with residential purposes, if it is used as a backyard, for example, then it is part of the curtilage and not an open field.
3. An area can be an open field even if it is thickly wooded or can't be viewed from a public vantage point.

VII. Abandoned Property

An officer may, without a warrant, seize and search property that the officer has good reason to think has been abandoned.

VIII. Aerial Surveillance

Surveillance of outdoor areas from public airspace is not a “search”. Even if the area in question is within the “curtilage of a dwelling”.

IX. Public Places “Open View”

There is no requirement that an officer obtain a warrant before seizing things brought into a public place open to public view. Nor is a warrant needed just to look at something that is in “open view”, even if the officer would need a warrant to seize it.

X. Plain View

An officer may, without a warrant, seize any contraband or evidence of a crime that is in “plain view” and to which the officer has lawful access.

XI. Plain Touch

If, while frisking a suspect for weapons, an officer detects an object that is not a weapon, the officer may seize it without a warrant if your experience and sense of touch make it “immediately apparent to you that the object is contraband or evidence of a crime”.

XII. Private Searches

- A. It is elementary law that a private citizen is not bound by the requirements of the Fourth Amendment.

- B. An officer may use information gathered by a private citizen in a search, so long as no law enforcement officer took part in or encouraged the citizen's intrusion into the suspect's zone of privacy.
- C. An officer may follow up on the citizen's intrusion with an inspection of their own. But the officer must not intrude deeper into privacy than did the citizen. The officer's search is limited in scope by what the private search revealed.

XIII. Search Warrant

Unless one of the exceptions is present, an officer must obtain a warrant before searching a place or an object.

Joseph S. Johnson
Chief of Police

References
1. Accreditation Standards 1.2.4
2. General Order K.4 Stop and Frisk for Weapons/Firearms Search Report , K.5 Consent Searches
3. Fourth Amendment to the United States Constitution

Revision: This is a new General Order